
**APPEALS BOARD
UTAH LABOR COMMISSION**

MICHAEL J. FRENCH,

Petitioner,

vs.

**AMERICAN AIRLINES and
INSURANCE CO. OF THE
STATE OF PENNSYLVANIA,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0466

Michael J. French asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mr. French's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On May 31, 2005, Mr. French filed an Application For Hearing with the Labor Commission's Adjudication Division. This Application alleged that Mr. French was entitled to workers' compensation benefits from American Airlines for a lumbar back injury Mr. French sustained on December 20, 2004, while working as a baggage handler for American Airlines.

On June 29, 2005, American Airlines and its insurance carrier, Insurance Company of the State of Pennsylvania, (referred to jointly as "American" hereafter) submitted an Answer to Mr. French's Application. American denied that Mr. French was entitled to workers' compensation benefits for his alleged lumbar back injury because his work at American was not the medical cause of the injury.

The Adjudication Division assigned Judge George to conduct the adjudicative proceedings on Mr. French's claim. Judge George scheduled the matter for a formal evidentiary hearing to be held on December 21, 2005. On November 4, 2005, Mr. French submitted "Pre-hearing Disclosures" in which he changed the basis for his claim from a "lumbar" (low back) injury to a "back, neck and upper extremities" injury, all allegedly caused by his work accident at American on December 20, 2004.

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Judge George conducted the evidentiary hearing as scheduled, but left the evidentiary record open to allow Mr. French to submit additional medical records from Jordan Valley Hospital and Dr. Lorden. These records were received and accepted on December 27, 2005. Judge George then retired from the Commission before issuing his decision on Mr. French's claim.

On May 26, 2006, after Judge George had retired but before another ALJ had been assigned to complete this adjudicative proceeding, Mr. French submitted a letter stating that he had recently undergone cervical fusion surgery. Several pages of medical records related to the surgery were included with the letter. Mr. French asked that these records be added to the evidentiary record in this proceeding. American objected to admission of the additional medical records on the grounds that the evidentiary record was closed. American also pointed out that, even if the proffered medical records were considered, they did not include any medical opinion that Mr. French's cervical problems were medically caused by his work at American.

On August 4, 2006, Mr. French submitted another letter that again asked that his recent medical records be accepted as part of the evidentiary record. American again objected. At about this same time, Judge Marlowe was designated as Judge George's replacement in this proceeding.

On September 26, 2006, Judge Marlowe issued her decision. As to the new medical records submitted by Mr. French, Judge Marlowe declined to accept them into the evidence because the evidentiary record was closed. However, Judge Marlowe also observed that none of the proffered records established a medical causal connection between Mr. French's work at American and his cervical problems. Judge Marlowe awarded medical and disability benefits to Mr. French for his lumbar injury. Judge Marlowe denied benefits for Mr. French's cervical problems for lack of evidence of a medical causal connection between those problems and his work.

Mr. French now asks the Appeals Board to review Judge Marlowe's denial of benefits for Mr. French's cervical problems. Specifically, Mr. French argues that Judge Marlowe should have admitted the proffered medical records into evidence. He also argues that medical opinions and records that undermine his claim of a work-related cervical injury should be disregarded or discounted, for various reasons.

FINDINGS OF FACT

The Appeals Board adopts Judge Marlowe's findings of fact, as supplemented by this decision. The facts material to the issues raised in Mr. French's motion for review can be summarized as follows:

American employed Mr. French as a baggage handler. On December 20, 2004, as he was loading overweight baggage into an airplane cargo compartment, he experienced sudden pain in his right low back. He continued working. Approximately one month later, he sought medical attention for low-back pain. At that time he also reported "numbness in fingers of right hand only." He

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continued to work and to receive treatment for low-back pain, with no reference to any cervical pain.

While working on February 4, 2005, Mr. French again experienced back pain. He did not return to work after that date. He continued to receive medical care for low-back pain, with no reference to any cervical problems. Then, approximately three months after Mr. French stopped working, he began to complain of cervical pain and left-extremity paresthesia. By May 11, 2005, he was diagnosed with a cervical herniated disc. Mr. French ultimately underwent cervical fusion surgery on May 23, 2006.

Dr. Cottrell, the neurosurgical specialist who served as Mr. French's treating physician from late February to mid-April 2005, expressed the opinion that it is "unlikely" that Mr. French's work accident at American caused his cervical injury. Likewise, Dr. Knoebel, American's consulting physician, concluded that Mr. French's cervical problems "were not reasonably caused, contributed to or permanently aggravated" by Mr. French's work accident at American. No physician has expressed a contrary opinion that there is a medical causal connection between Mr. French's work accident at American and his cervical problems.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers and their insurance carriers to provide medical and disability benefits to each employee "injured . . . by accident arising out of and in the course of the employee's employment." In order to establish that his or her injury "arises out of" of employment, an injured worker must prove that the work accident or exertion is both the "legal cause" and the "medical cause" of the injury. Allen v. Industrial Commission, 729 P. 2d 15, 27 (Utah 1986).

In this case, Judge Marlowe concluded that, while Mr. French was entitled to workers' compensation benefits for his lumbar injury, he was not entitled to benefits for his cervical injury because he had failed to establish the necessary medical causal connection between his work accident and that cervical injury. The central issue now before the Appeals Board is whether Judge Marlowe was correct in this conclusion.

Also in Allen, *ibid*, the Utah Supreme Court explained the requirements for proof of medical causation in workers' compensation cases:

Under the medical cause test, the claimant must show by evidence, opinion, or otherwise that the stress, strain, or exertion required by his or her occupation led to the resulting injury or disability. In the event the claimant cannot show a medical causal connection, compensation should be denied.

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Applying this standard to Mr. French's claim, the Appeals Board agrees with Judge Marlowe that Mr. French has not met his burden to prove a medical causal connection between his work and his cervical injury. In particular, the only expert medical opinion on that issue comes from Dr. Cottrell, Mr. French's treating specialist, and from Dr. Knoebel, American's medical consultant. Both doctors came to the same conclusion—that Mr. French's work accident did not cause his cervical injury. There is no contrary medical opinion that supports Mr. French's claim.

As a final matter, the Appeals Board notes Mr. French's argument that Judge Marlowe erred in rejecting Mr. French's proffer of medical records and reports regarding his cervical fusion surgery. Having reviewed those records, the Appeals Board finds no information therein that is helpful in resolving the question of medical causation that is at the heart of the parties' dispute. The Appeals Board therefore declines to disturb Judge Marlowe's exclusion of those records.

ORDER

The Appeals Board affirms Judge Marlowe's order in this matter. It is so ordered.

Dated this 1st day of May, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.